

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

AUSTIN ATHERTON,

Defendant and Appellant.

C088173

(Super. Ct. No. 17CF01404)

Appointed counsel for defendant Austin Atherton filed an opening brief setting forth the facts of the case and asking this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

BACKGROUND

On March 20, 2017, a complaint was filed charging defendant with felony child endangerment (count 1; Pen. Code, § 273a, subd. (a)), misdemeanor driving under the

influence of alcohol (count 2; Veh. Code, § 23152, subd. (a)), and misdemeanor driving with a 0.08 percent blood-alcohol content (BAC) (count 3; Veh. Code, § 23152, subd. (b)), enhanced for driving with a 0.15 percent or greater BAC or for refusing to take a chemical test (Veh. Code, § 23578).

On July 12, 2017, defendant pleaded guilty to counts 1 and 3 and admitted the enhancement, in return for the dismissal of count 2 on the People's motion and a guarantee of no immediate state prison, conditioned on obeying all laws and making and keeping an appointment to see a probation officer. Defendant stipulated that the trial court could take the factual basis for the plea from probation reports or police reports. The plea stated that defendant's maximum legal exposure was six years in state prison.

On the evening of February 17, 2017, a Butte County Sheriff's deputy stopped a car driven by defendant after seeing it pull out of a parking lot with its tires spinning and smoking, then cross the fog line in the road. Defendant was driving two children ages eight and four years, respectively. The deputy could smell alcohol on defendant's person, his eyes were bloodshot, and his speech was slurred. Defendant refused to take field sobriety tests and breath or blood tests at the scene. Defendant later consented to a breath test, which showed a BAC of 0.19 percent.

On September 6, 2017, the trial court suspended imposition of sentence and placed defendant on four years of formal probation with 90 days in jail as a condition thereof, together with various fees and fines, both imposed and stayed.

On April 24, 2018, the probation department filed a petition for violation of defendant's probation, alleging that he failed to: report law enforcement contact, report to the probation officer, provide a urine sample for testing, abstain from alcohol, and refrain from accruing new charges. On April 26, 2018, defendant admitted the final three allegations. The trial court reinstated probation with additional jail time and ordered defendant into a residential substance abuse treatment program for a minimum of six months.

On August 28, 2018, the probation department alleged that defendant had terminated his participation in the residential treatment program without permission and then failed to report to the probation officer; defendant admitted both allegations.

On October 4, 2018, the trial court terminated probation and imposed a state prison sentence of six years, the upper term on count 1 with a six-month concurrent sentence on count 3. The court awarded 221 days of presentence custody credits (111 actual days and 110 conduct days) and ordered payment of the previously stayed probation restitution fine while adding a suspended \$300 parole revocation restitution fine. The court also reimposed the fines, fees, and restitution ordered when probation was granted, and ordered restitution to the victim minors in an amount to be determined.

DISCUSSION

Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Mauro, J.